JURISDICTION.

Jurisdiction is sought under 28 U. S. C., Section 1257 (3).

QUESTIONS PRESENTED.

The respondent suggests that the questions presented to the Court below should be stated as follows:

I.

Whether or not issues presented by the petition may be considered for purposes of granting a writ of certiorari when the questions have not been presented to the State Court?

II.

Whether or not any constitutional right of the accused is violated when a police officer testifies in a criminal proceeding as to activities and statements of the accused which occur in the officer's presence during the course of a general investigation of an unsolved crime and when such activities and statements actually form a part of the criminal transaction?

STATEMENT OF THE CASE.

The petitioner was convicted in the Criminal Court of Hamilton County, Tennessee, on February 19, 1965, of the crime of receiving and concealing stolen property of a value in excess of $100.00, and his punishment was fixed at a term of not more than three years imprisonment in the State Penitentiary.

At the time of the crime the petitioner operated the Morningside Garage in Chattanooga, Tennessee. The record shows that the Morningside Garage provided wrecker service for the particular police district in which it was located. It appears that police officers were known to frequent the garage and some officers testified at the trial on behalf of the petitioner. The principal witness for the State was an investigator for the Hamilton County District Attorney General's Office, Mr. Howard Shutters.

A 1963 Chevrolet automobile was stolen from its owner in Chattanooga on September 23, 1963. Two days later the automobile was found stripped of most of its parts on a residential street in that city. The vehicle was towed to Morningside Garage.

At Morningside Garage, the owner of the stolen automobile saw another 1963 Chevrolet on a painting rack. He examined the vehicle and recognized front end parts which had been taken from his automobile. The identification of these parts was made possible because the stolen automobile had been wrecked previously and had not been repaired to the satisfaction of its owner, there being certain blemishes and scratches on the fender, hood emblem and bumper.

Police were informed of the foregoing facts and the petitioner revealed that he had purchased the parts from a Mr. Danny Devitt. Petitioner was informed that the

parts had been stolen and he was advised not to move the vehicle until he further heard from the officers. The investigator, Mr. Shutters, learned later the same day that the car was no longer at Morningside Garage. The petitioner, when questioned about the disappearance of the car, told Mr. Shutters that he did not know the name of the person who owned the car, that he did not know where the owner lived, but that he had returned the vehicle to which the stolen parts were attached to its owner on the advice of his attorney.

Acting without the assistance of the petitioner, police officers located the automobile to which the stolen parts were attached and criminal charges were brought against the petitioner. Mr. Hubert Hood, who owned the automobile which had been repaired with stolen parts, testified that when he picked up his car at Morningside Garage the petitioner did not advise him that stolen parts were attached to it.

Upon his direct appeal to the Tennessee Supreme Court the petitioner filed the following assignments of error:

> "(1) Verdict [is] contrary to the law and the evidence.
>
> "(2) The undisputed evidence shows that no action of the defendant could be construed as conforming to the elements required by law, to be guilty of receiving and concealing stolen property.
>
> "(3) The Court erred in excluding from evidence the opinion in the case of State of Tennessee v. James Daniel Devitt, as this opinion, in and of itself, would have proven the defendant innocent beyond any doubt."

The Tennessee Supreme Court overruled the foregoing assignments of error and subsequently a petition to rehear was filed by petitioner. This petition, in effect, re-

argued points included in the assignments of error. Later, a supplemental petition to rehear was filed and this petition raised issues concerning the constitutional right of freedom from unreasonable search and seizure, prejudicial comments by the prosecuting attorney, and venue.

In disposing of the petitions to rehear, the Tennessee Supreme Court considered the matters raised in the original petition to rehear but rejected the contentions made by petitioner. The Court did not, however, consider the merits of or even allow the filing of the supplemental petition to rehear as may be seen by the following quotation from the Court's opinion:

> "The supplemental petition to rehear filed by additional counsel or substitute counsel raises issues presented for the first time. It is not even contended that these issues are properly raised. It is the rule of this court and the law of this state that there can be no Assignment of Error in a Criminal case before this Court unless the record affirmatively shows that the alleged error was seasonably called to the attention of the trial judge and ruled on adversely to the plaintiff in error. See Rule 14 (4) and (5), Supreme Court Rules, and cases cited thereunder.
>
> "It is also apparent from the supplemental petition that leave to file this supplemental petition was never properly obtained, as is required by Rule 32, Rules of the Supreme Court of Tennessee.
>
> "It is essential to the orderly process of law that the rules of this Court be complied with. It is a rare case where noncompliance with the rules of this Court will be permitted. This is for the reason that they are so extremely essential to the orderly and timely transaction of the business of the Court. In our opinion, this is not such a case."
>
> Appendix, Petition for Writ of Certiorari, Pages A7, A8.

BRIEF AND ARGUMENT.

I.

The jurisdiction of the Tennessee Supreme Court is appellate only. Section 16-304, Tennessee Code Annotated. See Appendix, Page 9. Further, as stated in the opinion of the Court upon considering the petitions to rehear, issues cannot be raised for the first time in the appellate court. Rule 14 (4) and (5), Supreme Court Rules. See Appendix, Page 11.

The rules of the Tennessee Supreme Court also provide that petitions to rehear must be filed within ten days after the original opinion is announced and that no second petition for rehearing shall be filed unless special permission is obtained from a court or a judge thereof. Rule 32, Supreme Court Rules. See Appendix, Page 10.

Thus, the supplemental petition to rehear was not in compliance with the rules of the Tennessee Supreme Court and was not considered. The matters alleged therein which form the basis of the contentions here have never been properly presented to the Tennessee Supreme Court.

It is well-settled that the Supreme Court of the United States will not review questions not presented below. **Slagle v. State of Ohio**, 366 U. S. 259, 6 L. Ed. 2d 277, 81 Sup. Ct. 1076 (1961); **F. T. C. v. Simplicity Pattern Co.**, 360 U. S. 53, 3 L. Ed. 2d 1079, 79 Sup. Ct. 1005 (1959); **New York Dock Co. v. The Poznan**, 274 U. S. 117, 71 L. Ed. 955, 47 Sup. Ct. 482 (1927).

II.

The basic elements of the crime of receiving and concealing stolen goods are that the goods have, in fact, been stolen by some person from their true owner, that such goods have been received by the accused, that the accused

knows them to have been stolen, and that the accused has the intent to deprive the true owner of said goods. **State v. Missio**, 105 Tenn. 218, 58 S. W. 216 (1900); **Williams v. State**, ... Tenn. ..., 390 S. W. 2d 234 (1965); Section 39-4217, Tennessee Code Annotated (Appendix to Petition for Writ of Certiorari, Page A8).

The petitioner was not prosecuted for disobeying the order or suggestion of a police investigator and, obviously, the police had not seized the vehicle. Nor was he prosecuted for "refusing" to reveal incriminating facts concerning the location of stolen property. As a matter of complete accuracy, the record does not support petitioner's use of the word "refused". The record reflects that petitioner claimed that he did not know the name or address of the man who owned the car to which the stolen parts had been attached.

Petitioner was prosecuted for receiving and concealing stolen property. His activities and statements during the course of a general investigation led to this prosecution and such evidence was not unlawfully obtained. See, for example, the distinction as to the general investigation and accusatory stages in **Escobedo v. Illinois**, 378 U. S. 478, 12 L. Ed. 2d 977, 84 Sup. Ct. 1758 (1964).

Respectfully submitted,

GEORGE F. McCANLESS,
Attorney General,
State of Tennessee,

EDGAR P. CALHOUN,
Assistant Attorney General,
State of Tennessee.

Certificate of Service.

I, George F. McCanless, Attorney General of the State of Tennessee, one of the attorneys for the respondent and a member of the bar of the Supreme Court of the United States, hereby certify that on the ... day of June, 1966, I served copies of the within brief in opposition to the petition for writ of certiorari on John Webb, petitioner, by mailing said copies in duly addressed envelopes, postage duly paid, to counsel of record, namely, Sizer Chambliss, Esq., Attorney at Law, Maclellan Building, Chattanooga, Tennessee 37402, and J. F. DiRisio, Esq., Attorney at Law, 910 James Building, Chattanooga, Tennessee 37402.

.....

George F. McCanless,
Attorney General,
State of Tennessee.